

NACOSH Minutes
July 15, 2009
Washington, DC
9:00 a.m. – 4:00 p.m.

Members Present:

Douglas Kalinowski, Chairman	Public Representative
Roy Buchan	Public Representative
Denise Pouget	Public Representative
Jim Swartz	Management Representative
Jennifer Bailey	Management Representative
Timothy J. Key	Health Representative
Susan Randolph	Health Representative
Kevin M. Sommers	Labor Representative
Barbara McCabe	Labor Representative
Karl Jacobson	Safety Representative

Welcome and Introduction of Members

Chairman Douglas Kalinowski opened the meeting by welcoming everyone and making introductions. He acknowledged the three new Committee members-- Dr. Roy Buchan, Dr. Timothy Key and Denise Pouget.

OSHA Activities Update

Acting Assistant Secretary Jordan Barab thanked the Committee for their commitment. He said that he highly values OSHA's advisory committees and he sees them as committees of advisors and we plan to listen and engaged in the work OSHA is doing. He said the Committee will be more heavily engaged during this administration. He talked about NACOSH nominating process and appointing and/or reappointing members.

He emphasized that Secretary Hilda Solis is very interested in occupational safety and health and fully supports OSHA.

He said that OSHA is back in the enforcement and standard-setting business. OSHA will be very aggressive on the regulatory front, on the enforcement front. He acknowledged that OSHA will be doing some controversial things that not everyone will agree with. He encourages people to come in and talk.

He mentioned that Secretary Solis is the daughter of labor union members and that she grew up very aware of not only worker issues but

health and safety issues as well. While in Congress, she had constituents that had been victims of popcorn lung.

The Secretary has said she wants to move more from voluntary protection programs to enforcement. He clarified that OSHA is not eliminating, as he's been misquoted, the Voluntary Protection Program. The agency will be taking an in-depth look at all cooperative programs, the VPP, the alliances and how they function, and how they contribute to OSHA's mission. He said OSHA will want a lot of public input into that review.

He said that President Obama has asked Congress for a fairly substantial increase in OSHA's budget, 10 percent overall.

Mr. Barab said that OSHA received a critical Inspector General report on its Enhanced Enforcement Program. The agency is looking to revamp the program and will soon emerge with a new version--the Severe Violators Enforcement Program--in the next few months.

OSHA launched a construction safety focus in the state of Texas. The agency is bringing in new enforcement personnel to respond to the high fatality rates among construction workers in the state. The program has been fairly successful in other regions. Texas has the distinction of having the highest number of construction fatalities in the country.

Mr. Barab said that OSHA will also launch a National Emphasis Program on Chemical Plants. The agency also has a National Emphasis Program on Refineries.

The agency will also be looking at recordkeeping. He said there's been a lot of criticism of injury and illness counting and whether OSHA and the Bureau of Labor Statistics (BLS) numbers are accurate. There was a congressional hearing last year, a number of reports and studies calling into question the accuracy of the numbers. The numbers are extremely critical for OSHA because they help target the inspections and focus its emphasis. There will be a National Emphasis Program on Recordkeeping.

He also talked about the regulatory process. OSHA is moving forward on its risk assessment, peer review of its risk assessment. OSHA finished the SBREFA review of diacetyl and provided a report. Secretary Solis announced

that the agency would begin rulemaking on combustible dust and this fall there will be an advanced notice of proposed rulemaking.

Regarding H1N1, Mr. Barab said that the federal government is making sure all departments and agencies are on the same page in terms of their policies and in terms of how they are protecting their workers. OSHA will be looking at the whole range of protections on pandemic influenza from engineering controls to personal protective equipment.

The agency hasn't decided what approach to take with ergonomics. He said that it is a major health and safety problem and a major political issue. He mentioned that \$10 million in Susan Harwood grants would be issued.

In response to a question about the role of NACOSH and the limited number of meetings held in the past, Mr. Barab said the committee should be advising the agencies not being advised. He said the committee will be taken very seriously which will involve more meetings and involvement in more issues.

There was a question about OSHA's biggest challenges or obstacles to achieve the administration's objectives and Mr. Barab said resources and the painfully slow regulatory process.

NIOSH Activities Update

Dr. Branche gave an update on personnel appointment at the HHS and the nomination process for a NIOSH Director. She said the NIOSH appropriations budget is \$360.1 million, a 16.1 million increase over FY 2008 appropriation for occupational safety and health and a \$38.1 million decrease for the World Trade Center activities. Budget increases in 2009 are targeted for NORA, Educational Research Centers, Healthier Workforce Centers, and efforts related to mining, personal protective technologies and pandemic flu. Additionally, \$55.4 million will be targeted for the Energy Employees Occupational Injury Compensation Program Act, which was transferred to NIOSH in 2009 as a direct appropriation.

Dr. Branche discussed NIOSH's efforts concerning the H1N1 flu. The agency had been involved since the first outbreak. NIOSH developed and

released several guidance documents to protect workers including: air crew guidance, cruise ship guidance, interim guidance to assist airline flight deck and cabin crew in identifying passengers who may have novel H1N1 flu. She noted that all relevant information is available on NIOSH's website.

She said that based on meetings with CDC in Atlanta, a H1N1 vaccine will be available by October 2009. It is likely that two vaccines will be called for and the public health guidance for both seasonal flu and H1N1, but the specific guidance for and instructions for how people should be vaccinated is still forthcoming.

She talked about the success of two conferences earlier in the year: Symposium on Radiology of Pneumoconiosis and the International Conference on Road Safety at Work. She also spoke about the Green Jobs Workshop scheduled in Washington, DC on December 14-16, 2009. The aim is to help frame issues of incorporating occupational safety and health considerations into green and sustainability efforts. She said that few questions are being asked about risk to workers and NIOSH is trying to engage in discussions around that issue.

Dr. Branche also talked about various blog topics that have received a lot of increase including: secondhand smoke and casino dealers; solutions for preventing lead poisoning; hearing loss at indoor firing ranges; nanotechnology, human and environmental exposure assessment of nano materials workshop; persistent pulmonary fibrosis; migration to the pleura, and other preliminary new findings about subchronic exposure to multiwalled carbon nanotubes.

Dr. Branche spoke of several awards to NIOSH staff. Among the awards mentioned were the American Conference of Governmental Industrial Hygienists (ACGIH) Awards Committee who recognized Jessica Ramsey as recipient of the 2009 John J. Bloomfield Award as an up-and-coming industrial hygienist who's made significant contributions to the profession by pursuing occupational health and safety hazards primarily through field work. The other ACGIH award went to Dr. Vince Castranova as recipient of the Herbert Stokingker Award that recognizes outstanding achievement in

industrial toxicology. Dr. John Howard, former NIOSH director, received NIOSH's James P. Keogh Award for Outstanding Service in Occupational Safety and Health.

During the questioning session, Dr. Branche was asked what her expectations were for NACOSH regarding advice and recommendations. She asked the Committee to bring issues that OSHA and NIOSH aren't bringing to their attention to the forefront. She said that their perspectives and expertise are valuable as it concerns occupational safety and health. She said that the area of occupational safety and health is not having the kind of jolt of fresh blood, people committing their time and attention and talents to the area in the levels the area warrants so she thinks NIOSH would benefit from hearing what the committee thinks about training programs. Are they sufficient? Are they in the right directions? What out we to do differently? She further stated that she agreed with Jordan Barab who said the committee should meet more frequently.

Mr. Kevin Sommers wanted to recognize Bill Haskell on a Special Technical Committee where they established through the National Institute of Justice, Ceburn PPE geared specifically for law enforcement. He said that Mr. Haskell did an outstanding job and he wanted to pass the compliment along to the top.

There was also conversations on the topic of research to practice (R2P) process and the strain it might have on research resources; health hazard evaluations; Prevention Through Design.

Legislative Update

Dr. Keith Goddard, Director, Directorate of Evaluation and Analysis, gave a brief update on Congressional bills concerning occupational safety and health. The summary was in four sections: OSHA reform bills, standard-specific bills, whistle-blower bills, and other related bills. The bills mentioned were: H.R. 2067, "Protecting America's Workers Act of 2009"; H.R. 2113, "Corporate Injury, Illness and Fatality Reporting Act of 2009"; H.R. 2199, "Protecting Workers from Imminent Dangers Act of 2009"; H.R. 3094, "Alexander L. Booker Child Protection Construction Site Safety Act; S.1299,

"Worker Infection Protection Act"; H.R. 2381, "Nurse and Health Care Worker Protection Act of 2009";, S1031, "National Nursing Shortage Reform and Patient Advocacy Act"; H.R. 849, "Worker Protection Against Combustible Dust Explosions and Fires Act of 2009"; "H.R.242, "Recording and Reporting of Occupational Injuries and Illnesses;" H.R. 915, "FAA Reauthorization Act of 2009"; H.R. 672, "The Military Environmental Responsibility Act"; S.642, "Health Care for Members of the Armed Forces Exposed to Chemical Hazards Act of 2009"; H.R. 3000, "Josephine Butler United States Health Service Act"; H.R. 2749, "Food Safety Enhancement Act of 2009"; H.R. 875, "Food Safety Modernization Act of 2009; H.R. 2652, "Maritime Safety Act of 2009"; H.R. 1320, "Federal Advisory Committee Act (FACA) Amendments of 2009"; and H.R. 2709, "Indian Health Care Improvement Act Amendments of 2009".

Ethics Briefing

Robert Sadler, DOL Counsel for Ethics, summarized the ethics rules for non-federal employees. He talked about the two different kinds of federal advisory committees. One is composed of representatives who give a representational point of view from the organizations they have been chosen to represent. The other, special government employees (SGEs), provide their particular expertise. SGEs are subject to all the same ethics rules that federal employees are. He explained that representative members are subject to less restrictive ethics rules.

He cautioned the members against: 1) the misuse of government resources. They may only be used for official authorized government activities; 2) misuse of government information. Information may not be used for private activities or disseminated to persons outside the government unless they are specifically authorized to receive the information; and 3) the misuse of government affiliation. One may not use their association with the government to try to obtain personal benefits or favors for oneself, friends, family or business associates.

His email address is Sadler.Robert2@dol.gov.

Recordkeeping National Emphasis Program

Dave Schmidt, Director, Office of Statistical Analysis, said there were several academic studies which concluded that the Bureau of Labor Statistics was underestimating the number of injuries and illnesses that were occurring in the country by a significant amount.

He said that the 2006 Rosenman study concluded that BLS was missing about 68 percent of the cases. In 2007, the Boden study estimated they were missing about 50 percent of the cases. He explained that since 1996 OSHA has been doing its own estimates of the number of cases that are missed in a sub-sector of the economy and year by year concluded that employers are underreporting between 10 and 20 percent for this sub-sector.

Congress has looked at what is happening with injury and illness recordkeeping. They had the General Accountability Office (GAO) initiate a study in August 2008. GAO hopes to issue their report in October 2009 and one of the objectives is to assess what OSHA is doing to ensure that employers are properly recording injuries and illnesses. In addition to the study, Congress put in OSHA's FY 2009 budget a \$1 million line item calling for OSHA to do an enhanced enforcement on recordkeeping to make sure that OSHA find the people underreporting. Also, the Office of Training and Education will develop a permanent training course to focus on the injury and illness recordkeeping requirements.

He said that OSHA plans to target establishments believed to be underreporting and injuries and illnesses. If one looks at the past inspection history, all the big recordkeeping cases came out of either complaints or referrals. OSHA hopes to have the first phase completed within a year of implementation.

The national emphasis program will entail conducting onsite inspections of CY 2007 and 2008 injury and illness records in several hundred establishments throughout federal jurisdictions. He said that the best place to find establishments that are underreporting injuries and illnesses are ones that are telling OSHA they have low rates and their establishments are in high-rate industries.

He explained that each inspection will include three main components: records review, interviews and limited walkaround.

[\(Perhaps more details later\).](#)

Diacetyl SBREFA Panel

Mr. Robert Burt, Director, OSHA Office of Regulatory Analysis, discussed how the SBREFA Panel process works, what its role is in OSHA regulations, and the findings and recommendations that the panel made about SBREFA.

He said that the Panel has two major functions: 1) to review and comment on OSHA preliminary initial regulatory flexibility analysis; and 2) to suggest alternatives that may alleviate burdens on small businesses consistent with OSHA's statutory mandates. A panel is not necessary for all OSHA rules. Under the Regulatory Flexibility Act, when a rule is anticipated to have a significant impact on a substantial number of small firms, a panel is required.

OSHA has developed a set of written procedures for panels. A panel will be held if OSHA's calculation of costs are in excess of one percent of the revenues or five percent of the profits for the small businesses in any affected industry.

Mr. Burt said the Panel must take place prior to a proposal. The Panel process requires a total of 120 days from initiation to completion of the report. OSHA must respond to panel recommendations in the proposal preamble. The panel consists of members OSHA and DOL, SBA's Office of Advocacy, and OMB's Office of Information and Regulatory Affairs. The Panel chooses a set of small entity representatives (SERs) who provide oral and written comments. The Panel report is entered into the public docket as soon as they are available. The public may attend the teleconferences held with SERs.

In the case of diacetyl, OSHA is developing a rule because of lung disease in employees exposed to flavorings containing it. OSHA has completed preliminary draft rules. The diacetyl was delivered to the Office of the OSHA Assistant Secretary on July 2. Since July 7, the panel report has

been available at www.regulations.gov as exhibit 75 in the diacetyl docket (OSHA-200800046-0075).

Mr. Burt summarized the SERs comments. All of the SERs in the microwave popcorn and flavor manufacturing industries are addressing employee exposure to diacetyl. Most SERs felt that OSHA's cost estimates were reasonable. Some pointed to issues with respect to counts of the number of affected facilities. Some reported that many in their industries have no idea of the extent of their diacetyl use. SERs in other industries have not done any exposure monitoring, but many argued that exposures in their industries are likely to be minimal. He said that one of the greatest concerns of the SERs is that OSHA may impose costly regulations even in situations where employee exposures are minimal.

The Panel recommended that OSHA continue to examine both PEL and non-PEL approaches to the rulemaking. Some SERs favored a PEL approach because it is more flexible and would avoid situations where there might be major expenses for firms with limited exposures. Other SERs favored a non-PEL approach because the approach provides clear directions as to what to do and because the approach provides for employee protection to exposure to flavoring ingredients other than diacetyl. The Panel recognized that it was possible that the majority of employers in some affected industries may have minimal exposure to diacetyl. It recommended that OSHA consider options that limit the scope of the rule or that limit requirements placed on employers with minimal exposures provided such options are consistent with OSHA's requirements to protect safety and health. Such mechanisms could include scope limitations of various kinds (such as for naturally occurring diacetyl), encouraging the use of objective data and consideration of limiting requirements to users with minimal exposure.

OSHA's next steps include developing a proposed rule that includes a full set of responses to the Panel report. The agency will continue data gathering and site visits with improved information and improved cooperation.

During questioning, Mr. Burt clarified that SBREFA panels apply only to OSHA and EPA.

National Occupational Research Agenda (NORA) Implementation

Dr. Sid Soderholm, NIOSH NORA Coordinator, explained NORA as a national partnership effort to define and conduct priority research in occupational safety and health. He said that in the first 10 years, there were a series of town hall meetings where stakeholders were asked to talk about what they thought the main research needs in occupational safety and health were. Out of that process and multi-voting and a lot of consideration, 21 priority areas were listed that cover a broad range of topics from disease and injury endpoints to the basic methods.

His slideshow included the 21 NORA research priorities from 1996-2006. The priorities were not ranked, but did seek to encompass current and future needs. As illustrated on his slide, the 21 priorities were grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches.

Disease and Injury

Allergic and Irritant Dermatitis; Asthma and Chronic Obstructive Pulmonary Disease; Fertility and Pregnancy Abnormalities; Hearing Loss; Infectious Diseases; Low Back Disorders; Musculoskeletal Disorders; and Traumatic Injuries.

Research Tools and Approaches

Cancer Research Methods; Control Technology and Personal Protective Equipment; Exposure Assessment Methods; Health Services Research; Intervention Effectiveness Research; Risk Assessment Methods; Social and Economic Consequences of Workplace Illness and Injury; and Surveillance Research Methods.

Work Environment and Workforce

Emerging Technologies; Indoor Environment; Special Populations at Risk; Mixed Exposures; and Organization of Work.

The second decade (2006-2016) of NORA will move research to practice in workplaces through sector-based partnerships. He talked about the value of involving partners at every stage. NORA offers a blueprint for developing effective partnerships. Through NORA diverse parties collaborated to produce innovative occupational safety and health research, and then worked to translate that research into effective workplace practices. By leveraging the talents and resources of many partners, NORA has stimulated important advancements in workplace safety and health.

Every workplace has unique issues, challenges, and opportunities. As a result, NORA uses a sector-based approach to define and meet high priority needs. The sectors include: Agriculture, Forestry and Fishing; Construction; Healthcare and Social Assistance; Manufacturing; Mining; Services; Transportation, Warehousing and Utilities; and Wholesale and Retail Trade

The sector groupings are based on the similarity of occupational health and safety concerns in their workplaces.

NORA Sector Councils develop and maintain sector-specific research agendas. In addition, a Cross-Sector Council coordinates priorities that affect multiple sectors and groups of workers. Representing all stakeholders, the councils use an open process to set goals, develop strategies, encourage partnerships, and promote improved workplace practices.

Mr. Jacobson asked if the councils struggle with macro issues versus micro issues or gaps in science versus gaps in technology. Dr. Soderholm said yes on both accounts. He said one thing NORA's accomplishing with this sector focus is a strong emphasis on better using what we already know. There's certainly some gaps in science that are in there, also.

Dr. Soderholm responded that the cross sector council has been envisioned as a group that will look for efficiencies in tackling the same issue or similar issues across sectors, so we don't lose the cross-sector perspective.

Dr. Soderholm concluded by encouraging members to keep updated on NORA activities through the NIOSH e-News available on the NIOSH website (www.cdc.gov/niosh/nora).

An Overview of the Draft NIOSH Current Intelligence Bulletin entitled, "Asbestos Fibers and Other Elongated Mineral Particles: State of the Science and Roadmap for Research"

Dr. Middendorf discussed the current intelligence bulletin dealing with the state of the science related to asbestos fibers and other elongated mineral particles. NIOSH's goal is to identify key research areas, key gaps in the knowledge, and key uncertainties that need to be resolved before developing new recommendations. Once key uncertainties and gaps are identified, NIOSH will lay out a framework for the research.

He said that over the past 30 years, MSHA and OSHA IMIS databases suggest that through the 1980s and early 1990s, exposures to asbestos had been decreased dramatically. He said if you look at the exposures in the late 1990s and 2000s, most of the exposures are actually less than the limit of detection for the sampling analytic method.

One graph showed an uptick in the MSHA samples in the early 2000s; however, Dr. Middendorf thinks it was due to MSHA doing some very targeted sampling of high-exposure mines in preparation for the new permissible exposure limit for asbestos.

If you look at asbestos-related disease and focus on asbestosis, the chart shows an increase in deaths about twenty-fold between the 1960s and the 1990s. In the early 2000s, asbestos deaths appear to have plateaued and NIOSH expects that pattern to continue for a period of time before eventually declining. It appears as though we've reached an early part of the plateau which parallels the asbestos use from about 40 or 50 years previously. If this pattern continues, asbestosis deaths will continue about the same level for the next 35 years or so and then begin to decline.

In the case of mesothelioma, it does not appear to have peaked yet which isn't unexpected since it has a longer latency than asbestosis.

NIOSH wants to begin addressing the changing nature of the exposure to asbestos and related materials. Graphs also show that there's a dramatic decrease in the use of the highly-refined commercial asbestos. What is expected to happen is that there will be an even more prominent for the lower grade mixed exposures to asbestos and related materials.

NIOSH will need to address some of the emerging issues such as what is commonly referred to as naturally-occurring asbestos.